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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 335

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, PETITIONER,

vs.

THE UNITED STATES OF AMERICA, EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED AUGUST 31, 1932

CERTIORARI GRANTED OCTOBER 17, 1932

(37,032)

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, PETITIONER,

vs.

THE UNITED STATES OF AMERICA, EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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1 [Caption omitted.]

Filed February 18, 1929

In Supreme Court of the District of Columbia

As a District Court of the United States

At Law No. 76364

THE UNITED STATES OF AMERICA, EX REL. CHESTATEE PYRITES & Chemical Corporation

vs.

ROY O. WEST, SECRETARY OF THE INTERIOR

Petition for review and mandamus

The petition of the United States on the relation of Chestatee Pyrites & Chemical Corporation respectfully represents:

I

The relator, Chestatee Pyrites & Chemical Corporation, is a corporation duly and legally organized and existing under the laws of the State of Georgia, a citizen of the State of Georgia, residing in the county of Fulton in said State and this petition is brought to review the final decision of the Secretary of the Interior upon a question of law which has heretofore arisen in the adjustment, liquidation, and payment of relator's claim under the act hereinafter named and against Roy O. West, a citizen of the State of Illinois, officially residing in the District of Columbia.

II

That the said Roy O. West, respondent, is Secretary of the Interior of the United States, and as such charged with the administration of the laws of the United States relative to the war minerals claims and especially section 5 of the act of March 2, 1919, and the amendments thereto, including the amendment entitled "A bill to amend section 5 of an act approved March 2, 1919, known as the war minerals act," approved February 13th, 1929, and such respondent is sued in his official capacity as Secretary of the Interior as aforesaid.

2 III

The said respondent as Secretary of the Interior and his predecessors in office under said section 5 of the said act as amended was and is authorized to adjust, liquidate, and pay net losses suffered by

any firm, person, or corporation by reason of producing or preparing to produce pyrites in compliance with the request or demand of the Department of the Interior when such production was to supply the urgent needs of the Nation in the prosecution of the war.

IV

The Chestatee Pyrites & Chemical Corporation between the dates of the 6th of April, 1917, and the 11th day of November, 1918, in preparing to produce and in producing pyrites in compliance with the request of the Department of the Interior to supply the urgent needs of the Nation expended and incurred obligations in good faith for and upon property containing pyrites in sufficient quantities to be of commercial importance.

V

As authorized by said act of March 2, 1919, section 5, the Chestatee Pyrites & Chemical Corporation, on March 5, 1919, filed its claim with the Secretary of the Interior seeking and praying that an award be made to it under said act of its net losses for the expenditures made and obligations incurred by complainant in good faith upon property which contained pyrites as described in section 5 of said act.

VI

In the said petition or claim filed as aforesaid this relator as part of said expenditures and obligations, claimed as a loss expenditures for salaries paid its executive officers, for property taken over as a result of the request and demands of the Department of Interior, for taxes and for legal expenses.

VII

Hearings were had before the agencies established by the Department of Interior, and an award was made for other items of relator's losses, but the respondent and his predecessors in office denied any award for the items stated in Paragraph VI hereof.

VIII

Relator's losses stated in Paragraph VI hereof were denied not because of any issue of fact, but because the Secretary of the Interior held as a matter of law that such items of loss were not included within the provisions of said act.

IX

Thereafter, the Congress of the United States by the act hereinbefore described, approved February 13th, 1929, gave jurisdic-

3 tion to this court to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may arise in the adjustment, liquidation, and payment of claims under said section 5 of the act approved March 2, 1919, and amendments thereto.

X

In this case the present Secretary of the Interior, respondent herein, has refused to reopen the decisions of his predecessors in office and there has been a final decision of the Secretary of the Interior based upon the question of law for it is not disputed that relator paid and lost monies in the purchase of property, salaries, and legal expenses, and in that it is claimed by respondent as a matter of law such loss is not reimbursable under the law.

XI

Respondent and his predecessors in office erred as a matter of law in not finding that salaries, the property taken over in the nature of the purchase of property, taxes, and legal expenses lost as aforesaid by relator, were losses allowable under said act of March 2, 1919.

XII

Wherefore, petitioner on behalf of the relator aforesaid, prays:

1. That this court review the final decision of the Secretary of the Interior and his predecessors in office upon the question of law involved and direct said Secretary, respondent herein, to make an award of such amount as the facts show is due for purchase of property, for all salaries, and legal expenses.

2. That a writ of mandamus be issued directing the respondent, Roy O. West, Secretary of the Interior, to take jurisdiction of the claim of relator for expenditures made in the purchase of property, salaries, and legal expenses, as hereinbefore set forth and to allow such sum as may be just and equitable therefor, and to adjust and pay relator's net losses in the purchase of property.

3. That such other order or orders be entered as this court may deem necessary under the law.

4. That a rule may issue requiring respondent, Roy O. West, as Secretary of the Interior, to show cause, if any he can, why this court should not review said final decision and why a writ of mandamus should not issue as herein prayed.

CHESTATEE PYRITES & CHEMICAL CORPORATION,
By GEO. L. PRATT, *Vice President and Treasurer.*

[*Duly sworn to by George L. Pratt; jurat omitted in printing.*]

4 In Supreme Court of District of Columbia

Memorandum re substitution

Ray Lyman Wilbur, as Secretary of the Interior, substituted as respondent in the place and stead of Roy O. West, on March 15, 1929.

In Supreme Court of District of Columbia

Response to the rule to show cause

Filed March 15, 1929

* * * * * * *

Comes now Ray Lyman Wilbur, Secretary of the Interior, and responding to the rule to show cause herein, suggests to the court that the petition for review presents only the following question, namely, was a claimant engaged in producing or preparing to produce any of the minerals named in the act of Congress, which sustained a net loss on account of expenditures in the (a) purchase of property, to wit, land; (b) payment of taxes, (c) salaries, (d) attorney's fees or other legal services, entitled to have such losses reimbursed under the provisions of the war minerals relief act of March 2, 1919 (40 Stat. 1272), as amended?

The Secretary of the Interior decided in the negative as to each of said items, as shown by copies of the various decisions of the Secretary of the Interior and recommendations of the War Minerals Relief Commissioners marked, respectively, Exhibits A, B, C, D, and E, attached to the response to the rule to show cause in No. 76361 law, entitled the United States of America, ex rel. Chestatee Pyrites & Chemical Corporation v. Ray Lyman Wilbur, Secretary of the Interior, in this court, all of which exhibits are hereby referred to and made a part hereof.

Under the act of February 13, 1929, Public No. 728, 70th Congress, this court is vested with jurisdiction to review such questions of law as may have been decided in the disposition of petitioner's said claim by the Secretary of the Interior, and respondent makes no objection to, but on the other hand invites, a review of such questions. The petition for review presents the sole question for which petitioner prays a review herein, and it is assumed that the court will confine its review to the single question raised.

RAY LYMAN WILBUR,
Secretary of the Interior.
By E. C. FINNEY,
Solicitor, Interior Department.
O. H. GRAVES,
Assistant to the Solicitor.
_____ _____,
Attorney General.

5 In Supreme Court of District of Columbia

Demurrer to response

Filed March 15, 1929

* * * * * * *

Comes now the relator by its attorney and says that the answer of respondent to the rule to show cause and to the petition herein is bad in substance.

NOTE.—Points to be argued:

1. That as shown by the answer and response and the undisputed allegation of the verified petition herein, relator suffered net losses from payments made for the purchase of property, land, payment of taxes, salaries, and legal fees used in producing pyrites; that relator in making such and other expenditures complied with all the conditions of the law authorizing it to receive payment of its net losses; that respondent's predecessors in office refused to consider such net losses in the final decision making relator an award of other parts of its net losses. That from such facts such net losses for which an award was denied and payment refused are in law proper items to be included under awards required to be made by the Secretary of the Interior by the provisions of section 5 of the act of March 2, 1919, and act amendatory thereof, which statutes are referred to in the pleadings herein.

2. This court has jurisdiction and authority under the act of February 13, 1929, to determine the question of law herein involved and to enter such order herein as may be necessary to enforce its conclusion on such question of law.

EDGAR WATKINS,
Attorney for Relator.

Service accepted and receipt of copy acknowledged this 15th day of March, 1929.

O. H. GRAVES,
Attorney for Respondent.

In Supreme Court of District of Columbia

Stipulation re withdrawal of response, etc.

Filed September 24, 1929

* * * * * * *

It is hereby stipulated and agreed by and between counsel for petitioner and counsel for respondent—

(1) That the response heretofore filed herein be withdrawn and stricken from the record.

(2) That the uncertified copies of the findings of the Secretary of the Interior and the War Minerals Relief Commission and the Assistant Commissioner of War Minerals, attached to the substituted answer in 76361 law, may be considered by the court in connection with this case, with the same effect as though they were the originals thereof.

6 (3) That the respondent be permitted to file and serve an answer in lieu of said response, and the demurrer to the response now on file be considered a demurrer to such answer.

(4) That this case remain in statu quo upon the docket of this court until further order of the court.

Dated September 2, 1929.

EDGAR WATKINS,
Attorney for Petitioner.
O. H. GRAVES,
Attorney for Respondent.

In Supreme Court of District of Columbia

Order allowing withdrawal of response, etc.

Filed September 24, 1929

* * * * * * *

In accordance with the stipulation of counsel for the respective parties in this case, dated September 2, 1929, and duly filed herein, it is this 24th day of September, 1929, adjudged and ordered:

1. That the respondent be and he hereby is permitted to withdraw from the record the response to the relator's petition for mandamus heretofore filed by him.

2. That the respondent be and he hereby is permitted to file and serve an answer in lieu of said response, and that the relator's demurrer to said response which is now on file, be permitted to stand and be considered as a demurrer to such answer.

3. That the uncertified copies of the findings of the Secretary of the Interior, of the War Minerals Relief Commission, and of the Assistant Commissioner of War Minerals, which are attached to the substituted answer to be filed by the respondent in case at law No. 76361, entitled United States of America ex rel. Chestatee Pyrites and Chemical Corporation *v.* Ray Lyman Wilbur, Secretary of the Interior, may be considered in this case by the court with the same effect as though they were original papers.

4. That this case remain in statu quo upon the docket of this court until further order of the court.

WENDELL P. STAFFORD,
Justice.

In Supreme Court of District of Columbia

Answer to the petition for mandamus

Filed September 24, 1929

* * * * * * *

For answer to the petition in the above-entitled cause, the respondent, Ray Lyman Wilbur, says as follows:

1. The respondent admits that the allegations of the first paragraph of the petition were substantially correct at the time it was filed.

2. The respondent says that since the petition in this case was filed, Roy O. West, the respondent named therein, has ceased to be the Secretary of the Interior, and that this respondent, Ray Lyman Wilbur, now is Secretary of the Interior. The respondent
7 says that such authority and duties as were granted to or were imposed upon his predecessor by the act of March 2, 1919, and its amendatory acts, have devolved upon this respondent.

3. The respondent admits the substance of the allegations of the third paragraph of the petition.

4. The respondent admits the allegations of the fourth paragraph of the petition, upon information and belief.

5. The respondent admits the allegations of the fifth paragraph of the petition, except that he says that the petitioner's war minerals claim was not filed in due form until April 1, 1919.

6. Answering the allegations of the sixth paragraph of the petition, the respondent says that the claim filed by the petitioner and known as war minerals claim No. 1, requested the payment of an item of $25,966.67, representing salaries alleged to have been paid by the petitioner to its executive officers; an item of $834.76 representing taxes paid by the petitioner; an item of $585.75 representing money paid for legal services; and an item of $750 representing a part of the purchase price of real estate acquired by the petitioner. The respondent says that he assumes that these are the expenditures referred to in the sixth paragraph of the petition, as the petition itself fails to identify the exact items of expense to which it relates. With respect to the real estate purchased by the petitioner, the respondent denies that the purchase was made at the request and demand of the Department of the Interior.

7. The respondent admits the allegations of the seventh paragraph of the petition.

8. Answering the eighth paragraph of the petition, the respondent says that he is not informed whether payments of the character and in the amounts claimed by the petitioner, as hereinbefore stated, actually were made by it as a matter of fact, and he says that he will demand strict proof of the fact should its proof become necessary.

The respondent says that he admits, however, that the then Secretary of the Interior held as a matter of law that the items of alleged expense in question could not be considered as losses under the provisions of the act of March 2, 1919.

9. The respondent admits the allegations of the ninth paragraph of the petition.

10. Answering the allegations of the tenth paragraph of the petition, the respondent says that he does not admit that the petitioner paid and lost money in the purchase of property, in salaries, and in legal expenses. On the other hand, he expressly denies that any loss resulted to the petitioner by reason of paying money on account of the items specified.

11. The respondent denies that he, or his predecessors in office, committed the error of law alleged in the eleventh paragraph of the petition.

12. Answering the entire petition, the respondent says that after the Chestatee Pyrites and Chemical Corporation had filed its war minerals claim No. 1, as aforesaid, the claim and all of its items were carefully examined by the War Minerals Relief Commission and by the respondent's predecessors in office, the former Secretaries of the Interior, and that a full opportunity was given to the
8 claimant to present all the facts in connection with its claim and to be heard with respect thereto, and that a number of hearings with respect to the claim actually were had both before the War Minerals Relief Commission and the said former Secretaries of the Interior.

The respondent says that as a result of such examination and hearings, as aforesaid, the War Minerals Relief Commission, under date of June 5, 1919, recommended to the then Secretary of the Interior that an award in the amount of $133,528.46 be made to petitioner, and stated that the amount of the payment recommended was the entire sum for which the United States Government appeared to be under moral or statutory obligation.

The respondent says that thereafter, on August 8, 1919, the then Secretary of the Interior, the Hon. Franklin K. Lane, found in favor of the petitioner for a sum in excess of that recommended by the War Minerals Relief Commission, and made an award to it of $219,607.90.

The respondent says further that on October 15, 1919, Secretary Lane increased the amount of his award to $223,529.17, and that that amount was paid to and actually received and accepted by the petitioner.

The respondent says further that thereafter, as the result of a further consideration of the petitioner's claim by the War Minerals Relief Commission and Hon. Albert B. Fall, the then Secretary of the Interior, the Secretary made an additional award of $469,784.62 in the petitioner's favor, which amount was paid to and actually received and accepted by it.

The respondent says that Secretary Fall in making his award as aforesaid, made the following statement:

"I have investigated this case and listened with great interest and a large degree of sympathy to the statements made by counsel for the claimants, and to the arguments advanced with reference to the matter of allowing interest upon this claim; additional allowance for services, and an allowance of an increased amount for compensation for the free-stimulation plant.

"After full consideration, I am confident that the conclusions reached by the commission are as nearly correct as it is humanely possible to arrive at a just and equitable sum to be awarded in relief, I therefore, find myself impelled to make the award as recommended, in the sum of four hundred sixty-nine thousand, seven hundred eighty-four dollars and sixty-two cents ($469,784.62)."

The respondent says that he believes from the record and evidence in the case, that the aforesaid statement of Secretary Fall was correct, and that the amount of the additional award then made was as nearly correct as it was humanely possible to arrive at a just and equitable sum to be awarded in relief, and that the entire amount of $693,413.79 which was paid to and received and accepted by the petitioner as aforesaid, represented all that the petitioner was justly and equitably entitled to receive under the terms of the act of March 2, 1919.

The respondent says that so far as he is advised, the petition in this case, as stated in paragraph six of this answer, refers to payments said to have been made by the petitioner comprising $25,966.67
salaries of its executive officers; $834.75 taxes; $585.75 for legal
9 services; and $750 for certain real estate acquired by the petitioner, which were all disallowed as losses in the adjustment of its claim.

With respect to the item of $25,966.67, the respondent says that the Chestatee Pyrites and Chemical Corporation was organized and incorporated by N. P. Pratt and George L. Pratt, who thereupon became and continued to be its sole stockholders. The respondent says that N. P. Pratt and George L. Pratt elected themselves to be the executive officers of the corporation, and voted and paid to themselves from the funds of the corporation the sum of $25,966.67 as executive salaries.

The respondent says that the interests of the corporation and its two stockholders were so closely identified that in filing war minerals claim No. 1, as aforesaid, the claim was filed in the names of the Chestatee Pyrites and Chemical Corporation, N. P. Pratt and George L. Pratt jointly. The respondent also says that the warrants issued in payment of the two awards made to the petitioner were drawn in favor of the Chestatee Pyrites and Chemical Corporation, N. P. Pratt and George L. Pratt jointly.

The respondent says that in considering and adjusting the said war minerals claim No. 1, the War Minerals Relief Commission and

the former Secretary of the Interior found that the said sum of $25,966.67 paid to themselves by N. P. Pratt and George L. Pratt did not represent a loss suffered by the corporation, or by its stockholders in producing or preparing to produce pyrites, and that it was not just and equitable that the amount so paid should be repaid by the United States. Both the War Minerals Relief Commission and the former Secretary of the Interior found, however, that it was just and equitable that a per diem allowance of $4 each should be made to N. P. Pratt and George L. Pratt for the period of 508 days, in lieu of salary, and that the amount of $4,064 accordingly was awarded on that account and included in the payment made to and actually received and accepted by the corporation and its stockholders, as aforesaid.

The respondent denies that the disallowance of the item of $25,966.67, as aforesaid, constituted an error of law, because he says that the act of March 2, 1919, did not contemplate that the executive officers of a corporation, who also were its sole stockholders, might withdraw the funds of the corporation, for their own benefit, and thereafter demand repayment of the same on behalf of the corporation in the guise of a loss sustained by it in producing and preparing to produce manganese.

With respect to the item of $834.76 paid for taxes, the respondent says that the amount in question was paid in the discharge of a burden imposed by the State of Georgia, or one of its political subdivisions, for the support of the State or for public purposes, that it did not represent the payment of a debt, and that the payment being made in the discharge of an obligation of citizenship did not and could not involve a loss. The respondent says further that it would be against public policy for the United States to directly or indirectly assume the burden of a tax assessed by a State, or its political subdivisions, against one of its own citizens. The respondent says further that he is advised that the taxes in question were assessed to, or assumed and paid by the petitioner as lessee pursuant to an agreement entered into with the lessor of the taxed land prior to the period covered by the act of March 2, 1919, and that, therefore, the payment made by the petitioner in any event was not within the scope of that act.

With respect to the item of $585.75 said to have been paid for legal services, the respondent says that attorney's fees represent the personal expense of the client who pays them. The respondent says further that he is informed and believes that the legal services represented by the payment aforesaid, as a matter of fact, were rendered in connection with a matter which had no relation to a production or a preparation to produce pyrites by the petitioner, and accordingly were not within the terms of the act of March 2, 1919.

With respect to the item of $750 said to have been paid for real estate purchased by the petitioner, the respondent says that he is informed and believes that the petitioner purchased the fee simple title to a certain tract of land for $1,590. Thereafter the petitioner removed the timber from the land which it used in connection with its mining operations. In presenting its war minerals claim as aforesaid, the petitioner estimated the value of the timber removed from the land at $840, and claimed repayment for the balance of the purchase price of the land, amounting to $750, although it still continued to retain title to the land in fee simple. The respondent says as a matter of fact that no loss resulted to the petitioner by reason of this transaction.

The respondent says, therefore, that no error of law was committed by any of the former Secretaries of the Interior in refusing to make an award in the petitioner's favor because of any of the items of its claim which are involved in this proceeding, and that no error of law was committed by the respondent in affirming and adhering to their decisions in that respect.

Having fully answered the petition, the respondent asks to be hence dismissed with costs.

RAY LYMAN WILBUR,
Secretary of the Interior.
By JOS. M. DIXON,
Acting Secretary of the Interior.

[*Duly sworn to by Jos. M. Dixon; jurat omitted in printing.*]

11 In Supreme Court of District of Columbia

Law 76364

Agreement re exhibits

Filed January 7, 1932

UNITED STATES DEPARTMENT OF THE INTERIOR,
Washington.

It is agreed that the attached exhibits A, B, C, D, & E are true copies of exhibits referred to in the answer and filed therewith, and may be filed and used the as originals x in Docket No. 76364—Chestatee &c. v. Wilbur.

O. H. GRAVES,
Atty. for Dept.
EDGAR WATKINS,
Atty. for Relator.

JANUARY 7, 1932.

EXHIBIT A

Commissioners: John F. Shafroth, Martin D. Foster, Philip N. Moore

DEPARTMENT OF THE INTERIOR,
WAR MINERALS RELIEF COMMISSION,
Washington, June 5, 1919.

The honorable the SECRETARY OF THE INTERIOR.

DEAR MR. SECRETARY: In the matter of claim No. 1, Chestatee Pyrites and Chemical Corporation and N. P. Pratt and George L. Pratt, referred by you to this commission for investigation, your commission beg to recommend an award of $133,578.46 as the entire sum for which the United States Government bears any moral or statutory obligation.

Very truly yours,

(Signed) JOHN F. SHAFROTH,
M. D. FOSTER,
PHILIP N. MOORE,
Commissioners, War Minerals Relief Commission.

[Copy]

EXHIBIT B

DEPARTMENT OF THE INTERIOR,
Washington, Aug. 8, 1919.

In re Chestatee Pyrites & Chemical Corporation, N. P. Pratt and George L. Pratt. Claim No. 1

The above is a claim under the war minerals relief act (section 5, act of March 2, 1919, 40 Stat. 1274). The law authorizes compensation for losses incurred in the production of pyrites during the war due to stimulation by the Government.

Here there was such stimulation commencing June 18, 1917. I have reviewed the record and brief filed and an award of $219,607.90 is made. This is based upon the report of the War Minerals Relief Commission, but with 56.6 as the percentage of stimulation and a partial allowance of the financing item.

12 Nothing has been allowed for the railroad since it appears that the rails were bought prior to the stimulation and the correspondence indicates the claimants' purpose to build prior to the Government's request. No allowance has been made for the salaries.

(Signed) FRANKLIN K. LANE, *Secretary.*

EXHIBIT C

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, October 15, 1919.

In re Chestatee Pyrites and Chemical Corporation, N. P. Pratt and George L. Pratt. Claim No. 1

In the above claim under the war minerals relief act, section 5, act of March 2, 1919 (40 Stat. 1274), an award of $219,607.90 was made August 8, 1919. Nothing was there allowed for the railroad. Additional testimony as to the railroad has now been submitted. The claimants have also urged that the amount of expenditure to which the percentage of stimulation was applied should be increased.

I have reviewed the record, the report of the War Minerals Relief Commission, and the exceptions thereto filed. No reason is found for disturbing the prior ruling as to the railroad. To the amount of expenditure upon which the percentage of stimulation (56.6%) is applied, the sum of $6,928.04 is added.

The award is accordingly increased to $223,529.17.

(Signed) FRANKLIN K. LANE.

EXHIBIT D

SEPTEMBER 22, 1922.
JB–WCS

Claim No. 1, The Chestatee Pyrites and Chemical Corporation, Atlanta, Georgia

Memorandum in review of—

This claimant had a partially developed plant at the time of Government interference, and the claim represents the loss due to the expanded operations under Government stimulation. It was the first claim considered under the original war minerals relief act.

The commissioners had had no experience in dealing with big, complex claims, and therefore no rules or policies had been tested by actual application. They attempted to fix the loss through percentages; that is, by basing it upon the proportion the amount claimant meant to expend and produce under his own nonstimulated plans bore to the estimated expenditure and production of the bigger mill, under Government stimulation. The result was that the percentage fixed by the commission was increased by the Secretary and, later, by the latter still further increased, with the claimant insisting that all were too low, and that the percent should apply to all the expenditures instead of to only a part of them.

It may be said now, without criticism of the former commission that the plan was unsatisfactory in some respects. Percent-

13 ages and ratios were confusing, and the element of doubt was too great. A more easily understood and more workable plan was adopted in the consideration of claims which came later.

In the present review, the former plan is not ignored entirely, as will be seen by the auditor's report, but the claim is considered practically de novo, in the belief that it is better to apply rules which have grown out of experience, and with which examiners are familiar, than to merely consider the alleged errors of a plan which is unfamiliar, because abandoned long before the amended act, under which we are not considering these claims, was passed. The auditor was directed to audit this claim in the same manner that all claims are now being audited. This meant that he was to treat the company as a going concern on the date of stimulation; that any loss or profit prior to that date, concerning which even claimant and counsel are not in perfect agreement, was claimant's own, with which the Government is not concerned; that all expenditures during the stimulation period, or which properly should be charged to the period, were to be listed; that deductions for items not allowable and salvage were to appear, and that the net loss was thus to be shown.

There may be controversy, later, over the items disallowed, or the salvage, but the plan itself can at least be understood, and the points in controversy, if controversy should follow, will not only be reduced in number, but they will be set out plainly. By this method the Government takes no account of the operations before stimulation, when it was not responsible for either losses or profits, but ascertains the loss during the stimulated period, for which it is responsible, by simply deducting from the expenditures for that period the items which must be disallowed, the receipts, and the salvage. Pursuant to these instructions the claim was audited, and the auditor's report, which is submitted herewith, shows that the task was performed with painstaking care and intelligence. Based upon that report, but not agreeing with the conclusions in every particular, the expenditures, deductions, and net loss are hereinafter set out.

It will be observed that the expenditures for the building of the railroad, which heretofore have been denied, are allowed. Considered under the amended act, and in the light of the accepted practice, there is no reason whatsoever why the expenditures for this railroad should not be compensated. Claimant, before stimulation, may have had it in mind some day to build the road, and he may have taken advantage of the opportunity to purchase some rails at a low price, but there is not the certainty that he would ever have built it. A fair deduction would be that the plan to build the road had been abandoned. There is the certainty that the road was built after Government stimulation; that Secretary Lane approved if he did not direct the building; that it was necessary in connection with the mining project, and claimant testifies that but for such stimulation and such urgency the expenditure would not have been made. The record is so clear, and so complete as to details, that there can be no reasonable doubt as to Government responsibility.

DEDUCTIONS

All interest charges have been deducted. It is not believed that the act contemplates the payment of interest on borrowed
14 capital. Counsel for claimant has filed a brief on this point in which, after acknowledging that in claims against the Government, interest is not allowed before judgment, he cites exceptions to the rule and attempts to place the beneficiaries of this act in the excepted class. He points to the contributions made by citizens in aid of the Revolutionary War, and the War of 1812, wherein interest was allowed when, finally, these advantages were repaid by the Government. But the claimants under the war minerals relief act do not stand in the same moral relation as did the persons who advanced money to the Government during the Revolutionary War or the War of 1812. The difference is that the early patriots placed their money at the disposition of their Government without expectation or chance of profit, but with the probability that all would be lost, while claimants under the war minerals relief act engaged in a business enterprise, with hope and expectation of profit. The Government now, because it publicly urged increased production of the ores, voluntarily repays net losses in cases where the hope of profit was not realized. The difference is plain.

Counsel, further, cites the case wherein the State of New York, by a decision of the Supreme Court, was refunded interest on bonds, which were issued to equip troops for the Civil War. Here, however, there was between the State of New York and the Government what amounted to a definite contract, Secretary Seward having wired the New York State officers to raise and equip the troops and stating that the Government would refund to the State the expenses incurred. Also, Congress had passed an act authorizing the refund. That is why the New York case was made an exception to the rule laid down by the Supreme Court, the language of which rule is as follows:

"Interest is not to be awarded against a sovereign government unless its consent to pay interest has been manifested by an act of its legislature, or by a lawful contract of its executive officers."

There were present in the New York case what the Supreme Court held to be a "lawful contract," which contemplated the repayment of interest, and the necessary legislative action.

Counsel also bases the claim for interest upon the equity provision of the war minerals act. The equity provision is a broad provision. The act, it is supposed, would be administered in equity even though the provision were absent. But the provision which says that no profits shall be allowed, is a specific provision, not to be ignored on the ground that "equity" would prevent its observance. It is because of this specific provision that interest on an operator's own money can not be allowed, for such compensation would be in the nature of a profit to him. If, therefore, interest is to be allowed

to the man who operated on borrowed capital, it must be upon the theory that he is to be treated differently from the man who risked his own money in the enterprise; that claimants who had no capital of their own, but had to borrow, are to be made a favored class. If the provision of the act relating to profits prevents an allowance for interest to the man who used his own money, it applies to all other claimants as well. If Congress had intended to allow interest on borrowed capital undoubtedly it would have provided for interest on invested capital, whether borrowed or not. In prohibiting the payment of interest on invested capital, by including the no profits provision, the payment of interest on borrowed capital was likewise prohibited. It is difficult in law or practice to place the man who has no capital on exact footing with the man who has. The disadvantage of having no capital is recognized in the business world, and the borrowing operator always is compelled to stand the charges which lack of capital entails. Unless it is to be held that interest on capital is not profit, the conclusion is inevitable that the interest loss sustained through the borrowing of capital is the operator's own loss and can not here be compensated.

Would apply to purchase of property

The arguments which ordinarily are used to support the repayment of interest apply with equal force to reimbursement for purchase of property. How, it is asked, could a miner without capital be expected to respond to the appeals of the Government for ore if he did not borrow the money, and, having borrowed it and produced the ore, why is the interest he paid not a legitimate item of expenditure under the act? Might it not as well be asked how a man having no mining property could answer the appeal unless he purchased or leased mining lands, and if he did so purchase or lease lands and thereby produced ore, would the purchase price not be a legitimate expenditure?

But if the Congress had contemplated reimbursement for purchase of property, many more millions than are represented in the war-minerals fund would have been appropriated, and provision would have been made for taking over of title to the property. It is a wrong inference to say that, in issuing appeals for increased production, the Government assumed a moral obligation to supply men with capital, to pay the cost of securing capital, or to take over mining lands at cost to the owners thereof. It is equally erroneous to read into the act a legal direction that expenditures of this character be compensated. When Congress permits the payment of interest by special act it is subject to conditions, such as rate of interest, period of time, etc., none of which conditions appear either in the original or the amended act. At the time the act was amended, last November, Congress and claimants well knew that the act was interpreted by those who were administering it to prohibit repayment for interest. Then was the time the question should have been raised and congressional expression secured. It has been contended before this

writer that the Government, in publicly urging increased production of these ores and not at the same time furnishing or offering to furnish the capital required, thereby assumed the obligation to repay interest charges where borrowing was necessary. Conversely, may it not be said that by not offering to furnish capital the Government gave notice that the matter of capital was the miner's own affair. The argument is further met by the fact that the Government permits the payment of interest through specific legislative action and not through obligations created as described.

16 Financing charges

If, then, the general published appeals for increased production did not relate to the furnishing of capital to those who did not have it, or the payment of interest to those who did, and if the act which followed contains no specific provision for financing charges, the repayment of the latter must find its authority in the wide discretion given the Secretary of the Interior in the administration of the act. There is no legal prohibition of the allowance of a financing charge, and if it were shown that the Government had specifically directed claimant to finance his operations substantially in the manner in which they were financed, the Secretary might, in his discretion, allow any part or all of such expenditure. And in the event of such allowance, it would not mean that a hard and fast rule had been adopted which would make repayable financing charges due alone to general published appeals for increased production, nor would it mean that bonuses or promotion charges which, in fact, were only excessive, usurious interest charges, are to be compensated. It would only mean that in claims where the Government through its agents was a party to the financing, the fact might be taken into consideration by the Secretary in fixing the award.

In this particular case, as is testified, the then Secretary of the Interior personally requested one of the claimants to operate the properties on a big scale, which claimant at first declined to do, unless the Government should underwrite the venture. This, of course, was impossible, and, after some delay, the Secretary, through his personal agent, requested Ashcraft and Wilkinson to use their influence to induce claimant to enlarge his operations, and further, he asked them to assist in financing him. Ashcraft and Wilkinson did so use their influence, and with success, and did finance claimants, for which financing claimant is obligated for a large amount. Claimant contends that the plan adopted was not more expensive than would have been the raising of the money by the sale of bonds, or through any of the other promotion plans which were in use during the war period. This, in substance, is claimant's side of the matter, and he asks that the cost of financing be compensated.

Ashcraft and Wilkinson were prominent in financial affairs. They had made a great deal of money in pyrites dealings because of the war. It is established that they urged claimant to enlarge his enter-

prise, and that they volunteered to secure the money therefor. They may have acted partly in response to the request of the Secretary, partly through patriotic motives, and partly because of the contract which they hoped to make and did make with claimant. Claimant was to pay 6 per cent on the loan to the bank and, in addition, was to pay Ashcraft and Wilkinson from fifty cents to one dollar a ton upon the entire production of the new mill up to 335,000 tons. As it was confidently expected that the new mill would run to its full capacity, they stood to make hundreds of thousands of dollars in the deal. What they really did in consideration of the contract was to assume a risk of loss. If they had merely pointed the way by which the money was secured, without incurring any risk themselves, the
17 contract would be outrageous. But the record shows that while they assumed a risk, they took pains to make the risk as small as possible. They made the contract with the Chestatee Company but in addition to the company's notes required the personal endorsement of the notes by claimants. They took what amounted to a lien upon the property of the claimant company and the ore in the ground. And in order to make the chance for profit as large as possible, claimant was required to make Ashcraft and Wilkinson the exclusive sales agent for the ore, for which they were to be paid a brokerage fee of 25 cents per ton. There were four successive contracts by which the $695,000 was furnished the claimant company, the last being more favorable to Ashcraft and Wilkinson than those which preceded it. It provided for the payment of $250,000 to Ashcraft and Wilkinson for their services in securing a loan of $695,000, and in addition, for a brokerage fee of 25 cents per ton on the ore. This tells the story. It shows that the amount to be paid, not considering the brokerage fee, was more than 35 per cent of the loan—a per cent for financing far above that allowed in the wild-cat schemes with which the country is familiar. To consider the financing charge in comparison with the estimated receipts for ore, as the auditor has done, obviously is not the proper view. The correct way to determine whether or not a financing charge is too high is to compare it with the amount of the loan. If, for instance, the receipts from the sales of ore should amount to $5,000,000, the per cent of the financing charge contained in this contract as compared with the $5,000,000 would be very small, but the fact would still remain that this claimant was to pay Ashcraft and Wilkinson $250,000 for a loan of $695,000. When a man in the ordinary course of business secures a loan, the commission is based upon the amount of the loan and not upon the value of the product which the borrower, as a result of the loan, might place upon the market. Of course, Ashcraft and Wilkinson are not the claimants here, although they will benefit more than will the claimants if an award be made, and whether or not they drove a hard bargain with claimants is not essential except as it bears upon the recognition of this financing contract as an obligation incurred and to be compensated. The real question is:

Was the financing contract such an obligation as should be repaid by the Government in whole or in part?

As to the allowance of the entire amount, there can be no question that it would not be warranted. It would mean payment to Ashcraft and Wilkinson for ore still in the ground, and which probably never will be mined. The unfulfilled part of the contract, if ever it was to be recognized under the act, was invalidated when Ashcraft and Wilkinson, having a lien upon the ore in the ground, consented to its disposal. When they took part in disposing of all the property of the Chestatee Company, and winding up its affairs, they were estopped from holding that company, or the Pratts, liable for the fulfillment of the contract. It is an error to hold that the provision in the act relating to obligations incurred means that any obligation whatsoever must be compensated. The language should be interpreted in connection with the language of the entire act. The obligation must relate to producing or preparing to produce
18 ore, and it must be a reasonable obligation, such as would be incurred by a reasonably prudent man. Moreover, the amount that would be repayable would be the amount for which the creditor could secure judgment in a court. The act contains a few mandatory provisions, the meaning of which can hardly be misconstrued, and the general administration is left to the wise discretion of the Secretary of the Interior for the purpose, undoubtedly, of preventing the payment of ridiculous, unfounded, or unreasonable charges and to give to claimants the amounts to which they are in justice and equity entitled.

In the first award, Secretary Lane allowed $18,112.00 for financing. He reached this amount by the following process: He first found that the per cent of stimulation which should be granted claimant was 56.6. On that basis $320,000 of the loan was considered admissible. He held that 10 per cent would be a reasonable allowance for financing, and, applying the 56.6 per cent of stimulation to 10 per cent of $320,000, the financing allowance was found to be $18,112.00.

I am of the opinion that 10 per cent is a reasonable allowance for financing in this particular claim. The amount of money required to meet the Government demands was so great as to make the securing of it by ordinary means almost impossible. The activities of the Government to induce Ashcraft and Wilkinson to finance claimant, so that war needs might be met quickly and in large measure, were personal, direct, and effective. The fact that Secretary Lane, who himself had a part not only in the stimulation of claimant but, through suggestion, in the financing, recognized that Ashcraft and Wilkinson had performed a service to the Government, is evidence of that service; and while the contract which they had with claimant furnishes no basis for fixing the amount to be allowed, a fair adjustment can be reached by a study of all the event connected with the transaction. Secretary Lane was warranted in making an allowance of 10 per cent, but the application of the 56.6 per cent both as to the

amount of the loan and the 10 per cent itself operates to bring the allowance less than it should be. The total amount of this loan was $695,000. Of this amount $50,000 was used in the period before stimulation. The 10 per cent for financing should apply only to the amount of the loan which went into stimulated operations, namely, $645,000, so that the allowance which is here recommended is $64,500.00.

Salvage

The question of salvage is perplexing in nearly all claims, but here it is unusually complex and difficult. The claimant, when submitting the claim, estimated the usable value of all the property at $200,000, but that was not intended to be an estimate of the salvage value, for it was stated at the time that there was no salvage value, because by the terms of the lease the machinery and equipment, or practically all of it, could not be removed from the property. Claimant, it appears, in offering to accept a deduction of $200,000, did so in
19 the belief that the equipment which they would have used in their own nonstimulated operations, would have cost that amount, and in consenting to such deduction it was on the supposition that there would be no deductions for interest, salaries, etc. It was, in, fact, a settlement proposition. Passing from the conjectural, let us see what was actually realized when this property was disposed of to the Piedmont Corporation. The claimant company had a floating indebtedness of $50,000, which it could not pay and which threatened to force it into bankruptcy. The Piedmont Corporation assumed this debt. The Piedmont Corporation, as a further consideration, transferred to claimant company $150,000 of its preferred stock. The question is, is this stock worth its face value? Claimant asserts that it is worth nothing at the present time, and, in view of the demoralized condition of the business which the Piedmont Corporation was or is to carry on, there are good grounds for the contention. But it is the policy to ascertain the value at the time of the armistice, and, therefore, the claimant's own statement on that point is taken for a basis. The total face issue of the stock was $1,000,000. If this stock represented an actual property value of $200,000, it was worth, as may readily be computed, 20 cents on the dollar, and the value of the $150,000 in stock transferred to the claimant company would be $30,000. I am of the opinion that this plan of ascertaining the deductable value of the stock, is as equitable as any that might be adopted. The items of sales of equipment previously must be added to the foregoing salvage, but they are not in dispute and are set out in the schedule of deductions.

Then comes the equipment which was purchased before stimulation, but used during stimulation, which the auditor presents for consideration in connection with salvage. As a matter of history the auditor states that in the Denison claim, No. 30, the former commission allowed the cost of equipment purchased before stimu-

lation and took no account of salvage, and he thinks that the Chestatee claim is on all fours with the Denison claim. If the auditor is right, the action of the former commission will not be accepted as a precedent to be followed, and the Denison claim, which is still before the commissioner for review, will be adjusted in harmony with the principles that are here being applied to the Chestatee claim. It should be stated in this connection, however, that examiners for the present commissioner regard the two claims as materially dissimilar. The soundness of these diverging views will have judgment when a recommendation as to the Denison claim is made.

The plan of the present commissioner in adjustment of claims where the plant was a going concern at the time of stimulation, and the reasons therefor, may be stated in a few words.

Equipment and machinery purchased before stimulation but used during stimulation, will be given a liberal rental or depreciation credit only. The reason why its purchase price will not be allowed is because the Government was in no wise responsible for its purchase, and the claimant at the moment he purchased the property had incured any loss that might come, and that loss was therefore his own. To allow for its purchase would be in fact to allow for the purchase of property.

20 Supplies which were purchased prior to stimulation and used during stimulation and thereby made completely valueless, such for instance as coal, will be compensated in full.

To hold that when the Government interfered it destroyed claimant's estate and deprived him of probable profits, which should be compensated, as has been suggested, is not sound. First, that would mean an allowance of profits, which is specifically prohibited by the act, and the profits would be merely estimated profits which might never have been realized. Second, the Government only says to claimants that it will reimburse the actual net loss that was sustained for the stimulation period.

In this review it is held that the claimant is fairly entitled to a rental or depreciation allowance of 20 per cent of the machinery and equipment purchased before stimulation but used during stimulation, and the entire purchase price of the supplies which were so used or consumed and deprived of all salvage value. It is understood, of course, that ordinarily there must not be a deduction for salvage on equipment and machinery where rental only is allowed. In this claim the equipment and machinery so rented was a part of the plant as finally sold and salvaged, but that fact was considered when the amount of salvage of the entire property was fixed, and therefore the 20 per cent now mentioned for rental is not subject to increase on account of salvage. The amount of the prestimulation expenditures to which the 20 per cent rental should apply is $132,139.31, which makes an allowance of $26,427.86 for that item. The cost of miscellaneous items in the same period, which should be compensated in full, is $16,901.07.

A subsistence allowance of $4,032 for G. L. and N. P. Pratt was substituted for the salary charge of $25,966.67, which appears in the claim. A straight salary allowance to a partner or part owner of a property would mean the granting of a profit to him. Subsistence is allowable, but if he is to receive compensation above subsistence it must come from profits earned by the corporation or partnership.

The claim as adjusted, according to the foregoing decisions, is as follows:

Expenditure:		
June 18, 1917, to Nov. 11, 1918 agreed upon by the auditor for the Government and the auditor for claimant		$784,791.14
Deductions:		
Ore sales	$82,077.87	
Executive salaries	25,966.67	
Interest	40,795.13	
Taxes	834.76	
Real estate	750.00	
Legal services	585.75	
	151,010.18	
Salvage:		
Salvage for stimulation period on basis of $80,000 from Piedmont Corporation	47,546.73	
Cash received for sundry equipment	7,695.00	
	55,241.73	206,251.91
		578,539.23
21 Add allowances:		
Rents from property included in deductions in operations a/c	2,881.63	
Per diem G. L. and N. P. Pratt, in lieu of salary, 508 days each at $4	4,064.00	
Rental or depreciation on prestimulation plant, etc., 20 per cent of $132,139.31	26,427.86	
Misc. items, tools, material, for water supply, etc., purchased before stimulation but used in the stimulated operations and their value thereby totally destroyed	16,901.07	
Financing contract, 10% of $645,000	64,500.00	
		114,774.56
		693,313.79
Less award heretofore made and paid		223,529.17
Net loss		469,784.62

I am of the opinion that the net loss for which claimant should now be compensated is $469,784.62, and I recommend an additional award of that amount.

In reviewing this claim I have been struck by the magnitude of the expenditures and the possibilities of output. The very bigness of it tended to lead an examiner unconsciously to fail to give claimant full justice, but that I have tried to overcome. If I have seemed to deal with it liberally, it was because the record showed that the then Secretary of the Interior, realizing no doubt that this property presented opportunity for the biggest production of pyrites in the

entire country, used every means in his power to persuade the claimant to develop it. It is true that he could not and did not guarantee claimant against loss, but his full influence short of underwriting the project was exerted. Always, too, there was a realization that claimant, in responding to Government request, will suffer great financial loss, notwithstanding the generous provisions of the war minerals relief act. It would be too much to say that the recommendations contained herein offer a perfectly accurate adjustment, but it is believed that they approach justice and equity as closely as can be expected in view of the complexity of the claim.

(Recommends additional award of $469,784.62.)

(Signed) JOHN BRIAR,
Assistant Commissioner.

EXHIBIT F

THE SECRETARY OF THE INTERIOR,
Washington, September 28, 1922.

The Chestatee Pyrites and Chemical Corporation, Atlanta, Georgia.
Claim No. 1

Additional memorandum by the Secretary, to be attached to the records of the assistant commissioner as part of the record herein.

I have investigated this case and listened with great interest and a large degree of sympathy to the statements made by counsel for the claimants, and to the arguments advanced with reference to the matter of allowing interest upon this claim; additional allowance
22 for services, and an allowance of an increased amount for compensation for the free-stimulation plant.

After full consideration, I am confident that the conclusions reached by the commission are as nearly correct as it is humanely possible to arrive at a just and equitable sum to be awarded in relief. I, therefore, find myself impelled to make the award as recommended, in the sum of four hundred sixty-nine thousand, seven hundred eighty-four dollars and sixty-two cents ($469,784.62).

If the Congress contemplated the payment of interest upon this claim, as has been suggested in argument, then this award, of course, does not preclude remedial action by the Congress of the United States acting directly.

(Signed) ALBERT B. FALL,
Secretary of the Interior.

ABF/C

(Indorsed:) January 19, 1932. Let this amendment be filed. Daniel W. O'Donoghue, Justice.

In Supreme Court of District of Columbia

Amendment to petition

Filed January 19, 1932

* * * * * * *

Petitioner, the United States, on the relation of Chestatee Pyrites & Chemical Corporation, amends its original petition filed herein, and for amendment says:

Add to Paragraph XI thereof, the following:

The salaries herein referred to, is an item of executive salaries set up in the report of Honorable John Briar, assistant commissioner, dated September 22, 1922, and filed herein as Exhibit D to the response of the Secretary of the Interior, which salaries, less a subsistence, were denied. The claim for property taken over as the purchase of property, is based upon the finding of said Briar in said report, wherein he gave the cost of the prestimulated plant as $149,040.38, and out of which allowances were made of $16,901.07; $26,427.86 and $32,453.27; such allowances not being allowed as purchase of property, but as rental, proportion of salvage, and for tools, material, etc., completely used. The remainder of such cost, so found by said assistant commissioner, was disallowed on his statement that "to allow for its purchase would be, in fact, to allow for the purchase of property." The purchase of property otherwise included in this paragraph, refers to what said assistant commissioner calls "real estate, $750.00"; taxes referred to are called by the said assistant commissioner as "taxes" and amount to $834.76. Legal services referred to are described in that language by the commissioner and amount to $585.75.

Wherefore, petitioner prays that this amendment be allowed and that he have the relief as in the original petition prayed.

EDGAR WATKINS,
Attorney for Chestatee Pyrites & Chemical Corporation.

[*Duly sworn to by Edgar Watkins; jurat omitted in printing.*]

23 Service of copy of the foregoing amendment received.

O. H. GRAVES,
Attorney for Ray Lyman Wilbur, as Secretary of the Interior.

In Supreme Court of District of Columbia

Respondent's supplemental answer to paragraph 11 of the petition for mandamus of this cause, as amended

Filed January 27, 1932

* * * * * * *

11. Answering the allegations of the eleventh paragraph of the petition for mandamus in this cause, as amended, the respondent, Ray Lyman Wilbur, as Secretary of the Interior, says:

The respondent denies, as a matter of fact, that the petitioner, Chestatee Pyrites & Chemical Corporation, sustained any loss whatever through the payment of salaries, or through taking over property in the nature of the purchase of property, or in the payment of taxes, or through the payment of legal expenses. The respondent demands strict proof that such losses, as a matter of fact, were sustained.

The respondent denies as a matter of law that the salaries alleged to have been paid by the petitioner, that the property alleged to have been taken over in the nature of purchase of property by the petitioner, that the taxes alleged to have been paid by the petitioner, and that the legal expenses alleged to have been paid by the petitioner, constituted losses sustained by it within the meaning of the act of March 2, 1919, and its amendments.

The respondent denies that he and his predecessors in office erred as a matter of law in not finding that the payments, as aforesaid, were losses allowable under said act of March 2, 1919.

With respect to the report of the Hon. John Briar, a member of the War Minerals Relief Commission, dated September 22, 1922, which is said by the petitioner to have been filed in this cause as Exhibit D to the response of the Secretary of the Interior, the respondent says that the said response of the Secretary of the Interior, together with its exhibits, merely was a response to a rule to show cause which was issued in this case, and that the said response was withdrawn and stricken from the record pursuant to an agreement between
24 the attorney for the petitioner and the attorney for the respondent, dated September 2, 1929, and that the said response no longer is a part of the record in this cause, it having been stricken from the record pursuant to an order of court in this cause dated September 24, 1929.

A copy of the said stipulation of September 2, 1929, is attached hereto and made a part of this amended answer as Exhibit A.

The respondent says that item 2 of the said stipulation contains an agreement that the papers which had been attached to the Secretary's so-called response, as exhibits, might be considered by the court in connection with the case, "with the same effect as though they were originals thereof," and that this item of the stipulation was confirmed by the order of court of September 24, 1929.

The respondent says that the answer in due form which thereafter was filed with petition for mandamus in this cause, and which is now on file therein, did not include and does not include any exhibits whatever; and that this statement has express reference to the aforesaid report of Commissioner John Briar.

The respondent says that the only intent and effect of the stipulation between counsel, dated September 2, 1929, was to make certain uncertified copies of the findings of the Secretary of the Interior, of the War Minerals Relief Commission, and of the Assistant Commissioner of War Minerals including his report dated September 22, 1922, admissible in evidence in the trial of this cause upon its merits

without being authenticated under the seal of the Department of the Interior as otherwise would have been necessary pursuant to section 661, title 28, of the United States Code; and that it was neither contemplated nor understood that such papers thereby became exhibits to the pleadings.

With respect to the item of executive salary "set up in the report of the Hon. John Briar," the respondent says that G. L. Pratt and N. P. Pratt were the sole incorporators and the only stockholders of the Chestatee Corporation, and that they therefore were in a position to distribute to themselves any portion of the corporation's assets which they saw fit, either in the guise of salaries or as dividends. The said G. L. Prat and N. P. Pratt withdrew $25,966.67 of the money of the corporation and distributed it to themselves as salaries, and they thereafter included this amount in the claim filed by the corporation pursuant to the act of March 2, 1919, in the guise of a loss suffered by the corporation in producing pyrites in compliance with the request of the authorized agents of the Government. Such distribution of the corporation's assets to themselves by these two stockholders did not, as a matter of fact, necessarily constitute a loss sustained by the corporation in producing or in preparing to produce pyrites pursuant to the provisions of the war minerals act. The withdrawal and appropriation of the corporation's funds by its two stockholders was not the result of contract or agreement with the corporation. Therefore, the Secretary of the Interior, pursuant to the provisions of section 5 of the war minerals act of March 2, 1919, had exclusive and final jurisdiction to determine what amount of the funds withdrawn by the sole incorporators and stockholders of the corporation, and paid to themselves, should be considered, in justice and equity, as a loss sustained by the corporation in producing or in preparing to produce pyrites.

25 The respondent says that the Secretary of the Interior did hear, consider, and determine that question, and that he found as a matter of fact that the Pratts were entitled to receive the sum of $4,032 in compensation for their services to the corporation, and that they were not in justice and equity entitled to receive any further amount. This was the determination of a matter of fact by the Secretary of the Interior, and by the terms of section 1 of the act of February 13, 1929, pursuant to which this action was brought, and by the terms of section 5 of the war minerals act of March 2, 1919, the Secretary's said decision was and now is conclusive, and it is not subject to review in any court; and in this respect it is immaterial whether the allowance made to the Pratts and treated as a loss to the corporation, was designated as an allowance to them or as a salary charge. The Secretary of the Interior, after hearing and consideration, already has determined as a matter of fact that the allowance which in justice and equity should be made to the Chestatee Corporation as a loss sustained in producing pyrites, on account of the compensation due to its officers for their services,

amounted to $4,032. Therefore, the courts now have no jurisdiction or power to require the Secretary to reconsider that question.

With respect to the item designated as "the claim for property taken over as the purchase of property," the respondent says that the facts with respect to this item are as follows:

The Chestatee Pyrites & Chemical Corporation was incorporated on July 24, 1917, by G. L. Pratt and N. P. Pratt, who thereupon became its sole and only stockholders.

Prior to July 24, 1917, and prior to any stimulation to produce under the war minerals act of March 2, 1919, the Pratts had acquired certain equipment and machinery at a cost of $132,139.31, and they also had acquired certain tools and miscellaneous items at a cost of $16,901.07.

Thereafter, and subsequent to stimulation, the Pratts turned over all of this aforesaid property to the Chestatee Corporation in return, as respondent understands and believes, for the stock in that corporation which they had issued to themselves, and in part consideration of a so-called agreement which they, themselves, made on behalf of the corporation, as its incorporators and sole stockholders, whereby the corporation assumed such portion of the indebtedness, which they, themselves, had incurred prior to stimulation through the purchase of the said machinery, equipment, tools, and miscellaneous items as then remained unpaid.

The respondent says that it was impossible for the Pratts, through the method stated, to convert money paid and indebtedness incurred by them prior to stimulation, into payments and indebtedness incurred under stimulation, or to bring such payments and indebtedness, or the property acquired through such payment and indebtedness, within the terms of the war minerals act of March 2, 1919.

In adjusting the claim of the Chestatee Corporation the War Minerals Relief Commission, speaking through Assistant Commissioner Briar in his decision of September 22, 1922, held that the equipment and machinery of the Chestatee Corporation which was purchased by its incorporators before stimplation would be allowed a liberal rental or depreciation credit in favor of the claimant
26 in adjusting its claim, but that the purchase price of the equipment and machinery so purchased would not be treated as a loss to the claimant for the reason that the equipment and machinery had not been acquired pursuant to any stimulation to produce a war mineral by an authorized agent of the Government. The commissioner said, in substance, that to allow for the purchase price of such property would be in fact to allow for the purchase price of equipment and machinery acquired prior to stimulation.

In adjusting the war minerals claim of the Chestatee Corporation, the War Minerals Relief Commission declared, in Commissioner Briar's said decision, that the Chestatee Corporation was fairly entitled to a "rental or depreciation allowance" of 20 per cent of the value of the machinery and equipment purchased by its incorporators prior to stimulation to produce by an authorized agent of

the Government but used by it subsequent to stimulation in the production of a war mineral.

The commission also declared that the entire purchase price of supplies which were used or consumed in the production of a war mineral, subsequent to stimulation, would be allowed for, as such supplies would have no salvage value. This applied to tools and miscellaneous items.

The commission also said that ordinarily there would be no deduction made on account of the salvage value of machinery for which rental was allowed.

From an audit of the claimant's accounts and from an examination of the facts in the case, the War Minerals Relief Commission determined, as a matter of fact, that the Chestatee Corporation owned the equipment and machinery, which also was referred to as "property," which had cost its incorporators $132,139.31, as aforesaid, and that in adjusting its war minerals claim the corporation was entitled to an allowance of 20 per cent of the cost of such property, or $26,427.86, as rental for the same subsequent to stimulation.

The War Minerals Relief Commission also found that tools and miscellaneous items, which were owned at the date of stimulation, had cost $16,901.07, and that such tools and miscellaneous items had either lost all salvage value or had been destroyed through use in the stimulated operations of the Chestatee Corporation, and that therefore this item of the corporation's claim was allowable in full.

The items of $132,139.31 and $16,901.07, give the total of $149,040.38, which is referred to in amended paragraph 11 of the petition, and which is designated therein as "the cost of the prestimulated plant."

The relator, in the said amended paragraph 11 of its petition, admitted that $32,453.27 additional, of the item of $132,139.31, also had been allowed to it, thus making a total allowance of $58,481.13 on account of the cost of the petitioner's plant as it existed at the date of stimulation; leaving a balance of $73,658.18 disallowed, of the items included in the petitioner's war minerals claim which had cost its incorporators a total of $149,040.38 prior to stimulation.

This balance of $73,658.18 was disallowed by the War Minerals Relief Commission, and afterwards by the Secretary of the
27 Interior, because it represented the balance of the cost of the claimant's plant and equipment which the Secretary determined, as a matter of fact, had been purchased by the claimant's incorporators prior to the date of stimulation fixed by the act of March 2, 1919, and which, therefore, was outside of the scope of the said war minerals act.

The statement of Assistant Commissioner Briar, referred to by the relator, that "to allow for its purchase would be in fact to allow for the purchase of property," had reference to "equipment and

machinery purchased before stimulation" as is clearly shown by the context.

With respect to the item of $750 claimed as a loss sustained by the Chestatee Corporation in producing or in preparing to produce pyrites, the respondent says that this item of relator's war mineral claim already has been fully examined, considered, and determined by the Secretary of the Interior.

The respondent says that the testimony, evidence, reports, and exhibits, submitted in connection with the relator's war minerals claim disclosed that the relator had required timber for use in connection with its mining operations, and that instead of purchasing such timber it had purchased a tract of nonmineral timber land at a cost of $1,590, and thereafter had removed the growing timber from the land.

The relator estimated the value of the timber removed at $840, and an award of that amount was made to it on account of the same. The relator claimed that the balance of the purchase price of the timber land, amounting to $750, also should be considered as a loss sustained by it in producing and preparing to produce pyrites, although the land in question was not mineral land, and although the relator continued to retain title to the same.

The Secretary thereupon determined as a matter of fact that the land itself had not been employed in producing or in preparing to produce pyrites, and he determined that the money expended for the fee simple title to the land itself as distinct from the timber thereon, did not constitute a loss sustained within the meaning of the war minerals act.

With respect to the item of $834.76 designated as taxes, the respondent says that there was nothing in the testimony, evidence, or reports submitted in connection with the relator's war minerals claim to show, as a matter of fact, that these taxes had been assessed and levied by reason of the relator's producing or preparing to produce pyrites pursuant to governmental stimulation, or to show that the taxes were anything more than the usual taxes assessed by the State of Georgia or its political subdivisions upon property within its borders.

The Secretary of the Interior determined, therefore, as a matter of fact that the amount of the taxes in question had not been lost to the relator by reason of producing or preparing to produce pyrites.

The Secretary of the Interior also found, as a matter of law, that taxes assessed by a State, or one of its political subdivisions, against property within its borders was a matter separate and distinct from the production or the preparation to produce a war mineral under the terms of the act of March 2, 1919, and its amendments. The Secretary found that such taxes were due and payable by
28 citizens of the State irrespective of any request to produce a designated mineral by an agency of the United States, and that such taxes were due and payable irrespective of the nature or outcome of any business venture entered into by the taxpayer.

The Secretary also found that the payment of such taxes did not constitute a loss to a war minerals claimant sustained by it in producing or in preparing to produce a war mineral. He found that the payment of such taxes was the discharge of the duty of citizenship due from the taxpayer to the State, and that it was paid in return for the protection which the taxpayer received from the State, and that the payment therefore was quid pro quo.

The Secretary also found that to refund to the relator, from the money of the United States, the amount of the taxes which the relator had paid to the State of Georgia, would be equivalent to the payment of a State tax by the Federal Government, and that there was no authority under any law of the United States for such a payment, and that there was no reason to believe that Congress in enacting the war minerals relief legislation intended that such payments should be made.

For all the reasons stated, both of fact and of law, the Secretary of the Interior refused to refund to the relator the amount of the State taxes said to have been paid by it.

With respect to item of $585.75 designated as the amount paid for legal services, the Secretary of the Interior found as a matter of fact that legal services said to have been rendered to the relator, and for which this payment was said to have been made, in no way involved the production or the preparation to produce a war mineral. The Secretary found as a matter of fact that the payment in question was made as the result of legal services rendered to the relator by attorneys, pursuant to the relation of the attorney and client, and that such services in no way contributed to the production of pyrites or any other war mineral, and that money paid to the attorneys as compensation for their services had not been lost, as a matter of fact, in producing or in preparing to produce pyrites.

The Secretary also found that the services rendered by the attorneys conferred a continuing benefit upon the relator, and that their value was not lost to it in producing or in preparing to produce pyrites.

The respondent says further that all of the items of claim set forth in the said amended paragraph 11, heretofore have been fully and repeatedly examined, considered, and determined by the various Secretaries of the Interior, in the light of testimony taken, of auditors' reports, of reports and recommendations by the War Minerals Relief Commission, and of briefs and arguments by counsel.

The respondent says that on August 8, 1919, after full hearing and consideration, the then Secretary of the Interior, the Hon. Franklin K. Lane, made an award to the relator of $219,607.90; that after further hearing and consideration Secretary Lane increased the amount of his said award to $223,529.17; and that after still further hearing and consideration, the Hon. Albert B. Fall, the then Secretary of the Interior, made an additional award to the relator of $469,784.62, and that the awards so made all were paid to the relator.

29 The respondent says that in arriving at the amounts awarded and paid to the relator, as aforesaid, all of the items included in amended paragraph 11 of the petition in this case were carefully considered and determined, and that to now require the Secretary of the Interior to again consider such items would be to impose an unreasonable burden upon the Secretary, and a useless expense upon the United States Government.

RAY LYMAN WILBUR,
Secretary of the Interior.
E. C. FINNEY,
VICTOR H. WALLACE,
O. H. GRAVES,
Attorneys for Respondent.

[Duly sworn to by Ray Lyman Wilbur; jurat omitted in printing.]

Exhibit A to supplemental answer

In Supreme Court of the District of Columbia

At Law No. 76364

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES AND Chemical Corporation

v.

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR. ADDRESS OF RAY Lyman Wilbur, Interior Building, 18th and F Streets NW., Washington, D. C.

Stipulation

It is hereby stipulated and agreed by and between counsel for petitioner and counsel for respondent—

(1) That the response heretofore filed herein be withdrawn and stricken from the record.

(2) That the uncertified copies of the findings of the Secretary of the Interior and the War Minerals Relief Commission and the Assistant Commissioner of War Minerals, attached hereto, may be considered by the court in connection with this case, with the same effect as though they were the originals thereof.

(3) That the respondent be permitted to file and serve an answer in lieu of said response, and the demurrer to the response now on file, be considered a demurrer to such answer.

30 (4) That this case remain in statu quo upon the docket of this court until further order of the court.

Dated September 2, 1929.

EDGAR WATKINS,
Attorney for Petitioner.
O. H. GRAVES,
Attorney for Respondent.

In Supreme Court of District of Columbia

Judgment

Filed February 11, 1932

* * * * * * *

This cause coming on to be heard upon petition as amended and answer thereto as amended together with Exhibits A, B, C, D, and E to said answer, and the demurrer filed herein on March 15, 1929; (taken and considered as a demurrer to the answer as amended) it is, by the court, considered and adjudged that a writ of mandamus do issue out of and under the seal of this court, directed to Ray Lyman Wilbur, as Secretary of the Interior, commanding him to proceed with the final adjustment of the relator's claim filed pursuant to section 5 of the act of Congress of March 2, 1919, chapter 94, as to a balance of $73,658.18 heretofore disallowed in the adjustment of an item of the claim covering the cost of machinery and equipment of a plant taken over by relator after stimulation, and as to an item of $750 expended for real estate, and as to an item of $834.76 paid for taxes, and as to an item of $585.75 paid for legal services, and as to an item of $25,966.67 paid as salaries to the relator's executive officers, and finally to adjust those items of the claim as items allowable under the said act of March 2, 1919, in accordance with the amounts due as determined by him.

This February 11, 1932.

No costs are adjudged against either party.

DANIEL W. O'DONOGHUE,
Justice.

FEB. 11, 1932.

Appeal noted in open court by the defendant.

DANIEL W. O'DONOGHUE,
Justice.

In Supreme Court of District of Columbia

Assignment of errors

Filed February 20, 1932

* * * * * * *

Comes now the respondent, Ray Lyman Wilbur, Secretary of the Interior, and assigns the following errors in the action and judgment of the Supreme Court of the District of Columbia in this cause, to wit:

The court erred—

1. In rendering judgment for the relator, the Chestatee Pyrites and Chemical Corporation, and against the respondent, Ray Lyman Wilbur, as Secretary of the Interior.

31 2. In adjudging, with respect to the item of $73,658.18 which is involved in this action, that property, rights, and obligations acquired or incurred by the incorporators of the Chestatee Corporation prior to stimulation by any authorized agency of the United States Government, thereafter were brought within the scope of the war minerals act of March 2, 1919, through their transfer to the corporation by its incorporators.

3. In adjudging, with respect to the item of $750 which is involved in this action, that the portion of the cost of nonmineral timber land, purchased to supply timber for the mining operations of the Chestatee Corporation, which was allocated by the Chestatee Corporation to the land itself, was within the scope of the said war minerals act.

4. In adjudging, with respect to the item of $834.76 which is involved in this action, that the amount of taxes paid by the Chestatee Corporation represents a loss sustained in producing or in preparing to produce a war mineral, and that it, therefore, is compensable under the war minerals act.

5. In adjudging, with respect to the item of $585.75 which is involved in this action, that money paid by Chestatee Corporation for legal services constitutes a compensable loss to the corporation within the meaning and scope of the war minerals act.

6. In adjudging, with respect to the item of $25,966.67 which is involved in this action, that the money of the Chestatee Corporation which was appropriated by its incorporators and paid to themselves as salaries, represented a compensable loss to the corporation within the meaning and scope of the war minerals act, and that it must be treated and considered as such by the respondent in the adjustment of the corporation's war minerals claim.

7. In not adjudging, with respect to the said item of $25,966.67, that the amount of compensation to the officers of the Chestatee Corporation for their services, which should be considered and allowed as a compensable loss to the corporation under the war minerals act, involved a question of fact for the sole determination of the Secretary of the Interior, and that his determination of the amount so to be allowed, and of the ground for its allowance, whether as salaries or as compensation for services, was final and conclusive and not subject to review by the court.

8. In adjudging, that any of the aforesaid items represents a loss which is compensable under the war minerals act of March 2, 1919, and in adjudging that the respondent shall finally adjust any of such items as a loss sustained in producing or in preparing to produce pyrites, within the meaning of that act.

O. H. GRAVES,
VICTOR H. WALLACE.
Attorneys for the Respondent, Ray Lyman Wilbur.

In Supreme Court of District of Columbia

Designation of the record

Filed February 20, 1932

* * * * * * *

Comes now the respondent, Ray Lyman Wilbur, by his counsel of record, and designates the parts of the record which he desires
32 to have included in the transcript, said parts being considered sufficient for the determination of the questions raised on appeal, namely:

1. The petition for mandamus.
2. Memorandum. Ray Lyman Wilbur, as Secretary of the Interior, substituted as respondent in the place and stead of Roy O. West.
3. The answer to the petition.
4. The relator's demurrer to the respondent's answer.
5. Relator's amendment to its original petition.
6. Respondent's supplemental answer to the amended petition.
7. Exhibits A, B, C, D, and E.
8. Judgment of the court, with notation of appeal.
9. Assignment of errors.
10. This designation of the record.

O. H. GRAVES,
Attorney for the Respondent.

Copy of the foregoing designation of the record was mailed this 19 day of February, 1932, to Edgar Watkins, Esq., attorney for the relator, at his address of record, Atlanta Trust Building, Atlanta, Georgia.

O. H. GRAVES,
Attorney for the Respondent.

In Supreme Court of District of Columbia

Additional designation of record

Filed February 27, 1932

* * * * * * *

To the clerk of said court:

Chestatee Pyrites & Chemical Corporation, relator, requests that the following portions of the record in the above-entitled cause be incorporated into the transcript of record on appeal to the Court of Appeals of the District of Columbia, in addition to those portions of the record designated in the præcipe heretofore filed herein by the appellant, Ray Lyman Wilbur:

I

Following paragraph 2 of appellant's designation of the record, add:

The response filed by said Ray Lyman Wilbur, the stipulation that such response should be withdrawn and stricken from the record and the order of the court entered September 24, 1929, approving such stipulation.

II

Add, to Number 7 of appellant's designation of the record, the following:

Stipulation of the parties hereto agreeing to use Exhibits A, B, C, D, and E, such stipulation being attached to said exhibits.

33 III

This designation of original parts of record.

EDGAR WATKINS,
Attorney for Chestatee Pyrites & Chemical Corporation.

Service is accepted of the above and foregoing designation of additional parts of record and a receipt of a copy thereof is acknowledged. This 24 day of February, 1932.

O. H. GRAVES,
Attorney for Ray Lyman Wilbur.

Supreme Court of the District of Columbia

[Clerk's certificate to foregoing transcript omitted in printing.]

34 [Minute entry of argument and submission, May 3, 1932, omitted in printing.]

35 In Court of Appeals of the District of Columbia

No. 5639

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, APPELLANT

v.

THE UNITED STATES OF AMERICA, EX REL. CHESTATEE PYRITES & Chemical Corporation

Appeal from the Supreme Court of the District of Columbia

Argued May 3, 1932. Decided June 6, 1932

Victor H. Wallace, of Washington, D. C., for appellant.
Edgar Watkins and Marion Smith, of Atlanta, Ga., for appellee.

Before Martin, Chief Justice; Robb, Van Orsdel, Hitz, and Groner, Associate Justices.

Opinion

VAN ORSDEL, Associate Justice: Appellee corporation filed a petition in the Supreme Court of the District of Columbia for a writ

of mandamus to compel the Secretary of the Interior to adjust certain of its claims alleged to be allowable under what is known as the war minerals relief act. From an order granting the writ this appeal was taken.

The question here involved is whether or not under the acts of October 5, 1918, 40 Stat. 1009; of March 2, 1919, 40 Stat. 1272, 1274; and of November 23, 1921, 42 Stat. 322, net losses incurred for the purchase of property prior to the stimulation period, under the act of March 2, 1919, and purchased by the relator during the period and expenditures for taxes, legal services, and salaries of executive officers during the stimulation period, are items of net loss which the Secretary of the Interior is required by law to consider in adjudicating an award to claimants.

Under the act of Congress of February 13, 1929, 45 Stat. 1166, jurisdiction was conferred upon the Supreme Court of the District of Columbia to review the decision of the Secretary on questions of law which had arisen, or might thereafter arise, in the adjustment of claims under the 1919 act, leaving, however, the decision of the Secretary on questions of fact conclusive. Wilbur v. United States Ex. Rel. Vindicator Consolidated Gold Mining Company, 284 U. S. 231.

36 Considering the right of plaintiff to recover for loss sustained by reason of the purchase of real estate where the title still remains in the plaintiff, the court in the Vindicator case said: "The petitioner argues that the phrase 'such net losses as have been suffered' excludes claims where, at the time of the enactment, the purchaser still retained title to the property. But the net losses mentioned are not thus limited. Losses by reason of expenditures for property, real or personal, still owned by claimants are not excepted. The purpose is merely to reimburse; loss resulting from speculative investments is excluded; allowance of profits is forbidden. In determining actual net loss the value of the property purchased and retained by claimant is necessarily to be taken into account. The construction for which petitioner contends necessarily rests upon the hypothesis that one may not suffer loss by reason of expenditures for land while he continues to own it. No such assumption can be entertained, for it is everywhere known that the contrary is true, and that the value of lands and plants purchased and constructed to produce minerals and other things needed wholly or principally to carry on the war was liable to, and in fact generally did, greatly and permanently decline when the struggle ended."

It was likewise held in the Vindicator case that interest paid on borrowed money which was lost in the enterprise was a loss for which compensation should be awarded. We are unable to distinguish this holding from a case where money was paid for legal services necessarily expended in connection with carrying on the enterprise, or for money paid for executive salaries in connection with the administration work necessary in the management of the enterprise.

Coming to the remaining item as to loss sustained in payment of taxes, we are of the opinion that this item should be considered by the Secretary in determining the net loss sustained by the plaintiff corporation. It does not, however, necessarily mean that the entire tax paid upon the property may be recovered as a net loss; but the difference between the tax paid on property embraced in this governmental enterprise prior to the stimulation period and the tax paid during that period on the same property, as well as the tax on additional property procured as a result of the requirement of the Government that plaintiff company should embark in this enterprise, are to be treated as proper items in the determination of net loss.

The judgment is affirmed.

JOSIAH A. VAN ORSDEL,
Associate Justice.

A true copy.
Teste:

_____ _____,
Clerk, Court of Appeals, D. C.

37 In Court of Appeals of District of Columbia

April Term 1932

No. 5639

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, APPELLANT

vs.

THE UNITED STATES OF AMERICA EX REL.

CHESTATEE PYRITES & CHEMICAL CORPORATION

Judgment

June 6, 1932

Appeal from the Supreme Court of the District of Columbia. This cause came to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Supreme Court, in this cause, be and the same is hereby, affirmed.

Per MR. JUSTICE VAN ORSDEL.

38 In Court of Appeals of the District of Columbia

[Title omitted.]

Præcipe for transcript of record

Filed July 7, 1932

The clerk will please prepare a transcript on application for certiorari to the Supreme Court of the United States in the above entitled cause, including therein the following:

(1) The printed record in the Court of Appeals.
(2) Minute entry showing argument of cause.
(3) Opinion of the court.
(4) The judgment of the court.
(5) This designation.
(6) Clerk's certificate.

O. H. GRAVES,
VICTOR H. WALLACE,
Attorneys for Ray Lyman Wilbur,
Secretary of the Interior.

39 [File endorsement omitted.]

40 [Clerk's certificate to foregoing transcript omitted in printing.]

41 Supreme Court of the United States

Order allowing certiorari

Filed October 17, 1932

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Indorsement on cover:] File No. 37032. District of Columbia Court of Appeals. Term No. 335. Ray Lyman Wilbur, Secretary of the Interior, petitioner, vs. The United States of America ex rel. Chestatee Pyrites & Chemical Corporation. Petition for writ of certiorari and exhibit thereto. Filed August 31, 1932. File No. 37032.

U. S. GOVERNMENT PRINTING OFFICE: 1932